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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 KELSY E. H.,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL  
14 SECURITY,

15 Defendant.

CASE NO. 3:19-CV-05358-DWC

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

16 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of  
17 Defendant's denial of Plaintiff's applications for child's insurance benefits and supplemental  
18 security income ("SSI"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73  
19 and Local Rule MJR 13, the parties have consented to have this matter heard by the  
20 undersigned Magistrate Judge. *See* Dkt. 2.

21 After considering the record, the Court concludes the Administrative Law Judge ("ALJ")  
22 erred when he improperly dismissed Dr. Keith Krueger's medical opinion. Had the ALJ properly  
23 considered Dr. Krueger's opinion, Plaintiff's residual functional capacity ("RFC") may have  
24 included additional limitations. The ALJ's error is therefore harmful, and this matter is reversed

1 and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social  
2 Security Administration (“Commissioner”) for further proceedings consistent with this Order.

### 3 FACTUAL AND PROCEDURAL HISTORY

4 On December 31, 2015, Plaintiff filed applications for child’s insurance benefits and SSI.  
5 See Dkt. 8, Administrative Record (“AR”) 15. Plaintiff alleges disability as of July 28, 2011. AR  
6 15. The application was denied upon initial administrative review and on reconsideration. See  
7 AR 15. A hearing was held before ALJ Gerald J. Hill on November 14, 2017. See AR 15. In a  
8 decision dated April 9, 2018, the ALJ determined Plaintiff to be not disabled. See AR 36.  
9 Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council, making  
10 the ALJ’s decision the final decision of the Commissioner. See AR 15; 20 C.F.R. § 404.981, §  
11 416.1481.

12 In Plaintiff’s Opening Brief, Plaintiff maintains the ALJ erred by failing to properly: (1)  
13 evaluate the medical opinion evidence; and (2) evaluate the lay witness opinions. Dkt. 10, p. 1.

### 14 STANDARD OF REVIEW

15 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of  
16 social security benefits if the ALJ’s findings are based on legal error or not supported by  
17 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
18 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).  
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DISCUSSION

**I. Whether the ALJ properly considered the medical opinion evidence.**

Plaintiff contends the ALJ erred in his evaluation of the opinion evidence submitted by Drs. Keith Krueger, Kimberly Wheeler, Patricia Gardner, Alysia Ruddell, Luci Carstens, and Ms. Sarah Magnuson-White. Dkt. 10, p. 8.

**A. Dr. Krueger**

The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). When a treating or examining physician’s opinion is contradicted, the opinion can be rejected “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish this by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

Dr. Krueger saw Plaintiff on three separate occasions. AR 30-31. Plaintiff first visited Dr. Krueger on October 3, 2012, where he completed a psychological evaluation of Plaintiff. AR 742-780. Among other things, Dr. Krueger opined Plaintiff had moderate to severe limitations in mental functioning, which included severe limitations with completing a normal workday/workweek without interruptions from psychologically based symptoms. AR 772. On March 19, 2014, Dr. Krueger completed a psychological evaluation of plaintiff, and opined Plaintiff had moderate to marked limitations in mental functioning, including marked difficulties

1 with adapting to changes in routine work settings and completing a normal workday/workweek  
2 without interruptions from psychologically based symptoms. AR 754-755. Finally, on February  
3 4, 2015, Dr. Krueger completed a psychological evaluation of Plaintiff, and opined Plaintiff had  
4 no to mild limitations with understanding, remembering, and persisting in tasks following very  
5 short simple instructions. AR 744. Dr. Krueger opined Plaintiff had moderate to marked  
6 limitations in mental functioning, including marked difficulties with adapting to changes in  
7 routine work setting, performing activities within a schedule, maintaining regular attendance,  
8 being punctual within customary tolerances without special supervision, and completing a  
9 normal workday/workweek without interruptions from psychologically based symptoms. AR  
10 744-745.

11 The ALJ gave Dr. Krueger's opinion partial weight, because:

12 (1) ...his opinion regarding her marked or severe mental health limitations are [sic]  
13 not consistent with the overall medical evidence of record. As discussed above, the  
14 medical evidence shows that the claimant had a few periods of decompensation due  
15 to medication noncompliance and situational stressors in her life. However, the  
16 medical evidence also shows that her mental health symptoms are generally stable  
when she is compliant with her medication regimen. (2) In addition, the evidence  
shows that she is quite bright and able to manage all her activities of daily living  
independently, volunteer with her church, and spend several hours daily writing.

17 AR 31 (numbering added).

18 First, the ALJ discounted Dr. Krueger's opinion because it was inconsistent with the  
19 medical evidence of record. AR 31. He specifically says this is so because Plaintiff's mental  
20 health symptoms are "generally stable" when she follows her medication regime. AR 31. An ALJ  
21 does not provide specific and legitimate reasons for affording a doctor's opinion little weight  
22 simply by pointing out a reduction in a claimant's mental health symptoms when compliant with  
23 claimant's prescribed medication regime. *Roland v. Colvin*, 2016 WL 3912015 \*5 (E.D. Cal. July  
24 18, 2016).

1 Here, the ALJ discounted Dr. Krueger's opinion by stating Plaintiff's mental health  
2 symptoms generally stabilized when she adhered to her medication regime. Such reasoning falls  
3 short of being specific and legitimate. *See Roland*, 2016 WL 3912015 at \*5. Further, the ALJ fails  
4 to consider Plaintiff's functioning between the episodes of noncompliance with her medication  
5 regime when she *was* following her medication regime. *See* AR 764 (while on Lithium and  
6 Zyprexa, Plaintiff was hospitalized twice with suicidal ideations and "multiple odd behaviors");  
7 AR 769 (while on Lithium and Olanzapine, Plaintiff was "thinking of walking in front of car").  
8 Stating that Plaintiff is "generally stable" when following the prescribed medication regime is  
9 conclusory, as it does not take into account Plaintiff's mental health status at times of compliance  
10 with the medication regime. The ALJ also failed explain how, when Plaintiff is stable, she is not  
11 suffering from the degree of functional limitations Dr. Krueger opined to. *See Blakes v. Barnhart*,  
12 331 F.3d 565, 569 (7th Cir. 2003) ("We require the ALJ to build an accurate and logical bridge  
13 from the evidence to her conclusions so that we may afford the claimant meaningful review of the  
14 SSA's ultimate findings."). The ALJ also failed to cite any support for his findings. *Id.* The ALJ  
15 also does not explain what exactly "generally stable" means.

16 Moreover, Dr. Krueger examined Plaintiff when she was on her medication. AR 752, 772.  
17 So, Dr. Krueger's opinion of her functional limitations is when Plaintiff is "stable." *See* AR 742  
18 (Dr. Krueger reported Plaintiff is on Zyprexa now, but off Lithium). As the ALJ didn't specify  
19 which medications he was referring to that help Plaintiff be "generally stable," there is nothing to  
20 indicate the medications Plaintiff was on when Dr. Krueger examined her were not the stabilizing  
21 medications. Accordingly, the ALJ's reasoning is inconsistent with the record. Thus, for the  
22 above reasons, the ALJ's first reason for discounting Dr. Krueger's opinion is not a specific and  
23 legitimate reason supported by substantial evidence.

1 Second, the ALJ gave little weight to Dr. Krueger's opinion because his opinion is  
2 inconsistent with Plaintiff's daily activities. AR 31. While the ALJ lists several of Plaintiff's  
3 daily activities, the ALJ fails to explain how Plaintiff's ability to independently manage all her  
4 activities of daily living, volunteer with her church, and spend several hours daily writing is  
5 inconsistent with Dr. Krueger's opinion. *See* AR 31. Without an explanation regarding what  
6 portions of Dr. Krueger's opinions are inconsistent with Plaintiff's daily activities, the Court  
7 finds this is not a valid reason for discounting Dr. Krueger's opinions. *See Brown-Hunter v.*  
8 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set forth the reasoning behind its  
9 decisions in a way that allows for meaningful review"); *See also Blakes*, 331 F.3d at 569. The  
10 Court concludes the ALJ's second reason for giving little weight to Dr. Krueger's opinions is not  
11 specific and legitimate and supported by substantial evidence. *See Popa v. Berryhill*, 872 F.3d  
12 901, 907 (9th Cir. 2017) (finding the ALJ erred when he failed to explain why the claimant's  
13 daily activities were inconsistent with the doctor's opinion).

14 The ALJ's two reasons for giving partial weight to Dr. Krueger's opinion are not specific  
15 and legitimate and supported by substantial evidence. Therefore, the ALJ erred.

16 "[H]armless error principles apply in the Social Security context." *Molina v. Astrue*,  
17 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial  
18 to the claimant or "inconsequential" to the ALJ's "ultimate nondisability determination." *Stout*  
19 *v. Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*,  
20 674 F.3d at 1115. The determination as to whether an error is harmless requires a "case-  
21 specific application of judgment" by the reviewing court, based on an examination of the  
22 record made "'without regard to errors' that do not affect the parties' 'substantial rights.'" *Molina*,  
23 674 F.3d at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).  
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1 Here, had the ALJ properly considered Dr. Krueger's opinion, the RFC may have  
2 included additional limitations. For example, Dr. Krueger opined Plaintiff had marked  
3 difficulties with maintaining regular attendance and being punctual within customary tolerances  
4 without special supervision. AR 744. The RFC makes no mention of these areas that could  
5 impact production and/or absenteeism. *See* AR 20-21. Had the ALJ given greater weight to Dr.  
6 Krueger's opinion, the ultimate disability decision may have changed. Therefore, the ALJ's error  
7 is not harmless and requires remand.

8 **B. Remaining Medical Opinions**

9 Plaintiff also contends the ALJ failed to provide adequate reasons for discounting the  
10 opinions of Drs. Wheeler, Gardner, Ruddell, Carstens, and Ms. Magnuson-White. Dkt. 10, pp. 3-  
11 8. The Court notes that the ALJ provided the same two reasons for providing less weight for each  
12 of the remaining medical opinions as were provided for giving partial weight to Dr. Krueger's  
13 opinion. AR 31 As the Court has discussed above, these two reasons are conclusory and,  
14 therefore, not valid. *See* Section I. A., *supra*. However, because the reconsideration of Dr.  
15 Krueger's opinion may impact the ALJ's analysis of the remaining medical opinions, the Court  
16 declines to analyze any of these opinions. Rather, on remand, the Court directs the ALJ to re-  
17 evaluate all the medical evidence, including Drs. Krueger, Wheeler, Gardner, Ruddell, Carstens,  
18 and Ms. Magnuson-White, and, if discounting any medical opinions, the ALJ is directed to  
19 provide proper reasons supported by substantial evidence for doing so.

20 **II. Whether the ALJ provided germane reasons for discounting the lay witness**  
21 **statements.**


22 Plaintiff next argues that the ALJ failed to provide germane reasons for rejecting the lay  
23 witness statements of Mary Hopkins May and Melissa Miller. Dkt. 10, p. 17. The Court  
24 concludes the ALJ committed harmful error in assessing the medical opinion evidence and must

1 re-evaluate all the medical evidence on remand. *See* Section I., *supra*. Because the ALJ's  
2 reconsideration of the medical opinion evidence may impact his assessment of the lay witness  
3 statements, the ALJ is directed to reconsider this evidence on remand.

4 CONCLUSION

5 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded  
6 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and  
7 this matter is remanded for further administrative proceedings in accordance with the findings  
8 contained herein.

9 Dated this 22nd day of October, 2019.

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12 David W. Christel  
13 United States Magistrate Judge  
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